



The Parties
The Plaintiffs

George E. Logue, Jr.
HC 64, Box 298A
Tout Run, PA 17771

Thomas G. Stubler
HC 64, Box 298A
Tout Run, PA 17771

**ATLANTIC CONSTRUCTION
FABRICS, INC., ET AL.**
1801-A Willis Road
Richmond, VA 23237

Defendants:

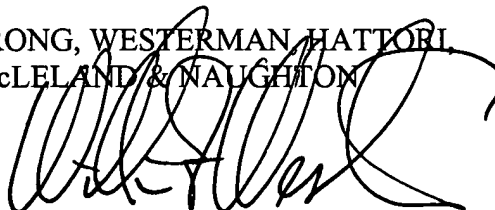
JMD CO.
5401 Progress Boulevard
Bethel Park, PA 15102

A copy of the Arbitration Award dated November 3, 1999, is attached hereto as **Exhibit A**.
It is requested that the Arbitration Award be made of record in the **'925** patent file.

The Commissioner is authorized to charge our Deposit Account No. 01-2340 for any fee which is deemed by the Patent and Trademark Office to be required to effect consideration of this statement.

Respectfully submitted,
for *Atlantic Construction Fabrics, Inc., et al.*

ARMSTRONG, WESTERMAN, HATTORI
McLELAND & NAUGHTON


William F. Westerman
Reg. No. 29,988

Atty. Docket No. **980738**
1725 K Street, N.W., Suite 1000
Washington, DC 20006
Tel: (202) 659-2930
Fax: (202) 887-0357
WFW/klh
Enclosures: **Exhibit A**

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1300 I STREET, N.W.

WASHINGTON, DC 20005-3315

202 • 408 • 4000

FACSIMILE 202 • 408 • 4400

ATLANTA
404 • 883 • 6400
PALO ALTO
650 • 849 • 6800



D. PATRICK O'REILLY
202-408-4100

TOKYO
011 • 813 • 3431 • 6943
BRUSSELS
011 • 322 • 646 • 0353

November 3, 1999

Dana D. McDaniel, Esquire
Williams Mullen Clark & Dobbins
1593 Spring Hill Road
Suite 510 East
Vienna, Virginia 22182

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WMCD

John D. Gugliotta, Esquire
Law Offices of John D. Gugliotta, PE
202 Delaware Building
137 South Main Street
Akron, Ohio 44308

Re: Atlantic Construction Fabrics, Inc., et al. v. JMD Company
Our Reference: 07858.0001-00000

Gentlemen:

I have reviewed the following:

U.S. Patent No. 5,575,925 ("925 patent");

The prosecution histories of Application Serial Nos.
08/139,098 and 08/353,786;

The principal and reply briefs of Atlantic Construction
Fabrics, Inc. and their attachments, received, respectively,
October 4 and 12, 1999;

The principal and reply briefs of JMD Company and their
attachments, received, respectively, October 4 and 12,
1999; and

The JMD Basin Bag.

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Exhibit A

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I also received a sample of the ACF Basin Bag, but, since it is irrelevant to the infringement issue I was asked to address, I did not consider it.

There was no showing that any catch basin with which the JMD Basin Bag is used includes a "recess located at the upper end" as specified in claim 10 of the '925 Patent. I note, however, that the instructions accompanying the JMD Basin Bag provide that the flaps may be "tucked into gaps around the grate." Such gaps exist where the grate sides are disposed in a recess. Moreover, I assumed most catch basins include such a recess so that the grate is supported in a position that is level with the road surface.

Based on the material reviewed and the assumption described above, I find JMD Company contributes to literal infringement of Claim 10 of the '925 Patent by selling the JMD Basin Bag which has no use except in the claimed method. JMD Company also induces literal infringement of the claimed method by providing with the JMD Basin Bag instructions for practicing the method of claim 10. Although JMD Company is alleged to have directly installed the JMD Basin Bag for customers, little direct evidence exists. Therefore, I did not find direct infringement by JMD Company.

Although the JMD Basin Bag is subject to an allowed patent application, the patentability of the JMD Basin Bag is irrelevant to literal infringement.

The addition of straps for attaching the basin bag to the grate does not eliminate the flaps extending from four sides of the Basin Bag. JMD Company instructs users of the Basin Bag to "extend [the flaps] out onto the road surface." Thus, there is no way the grate can be placed on the catch basin without satisfying the claim requirement of "sandwiching each of the filter bag flaps between the top of the basin and the grate sides." The flaps, when sandwiched between the basin top and grate holds the bag "in place." JMD Company's own patent application confirms the purpose of placing the flaps on the road surface: "The flaps 34, 36 are then extending outward over the top edge of the basin 30


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and subsequently frictionally impinged between the grate 32 and the basin's upper edge."
(U.S. Patent Appl'n Serial No. 09/099,787, page 9, lines 19-21).

The straps in the JMD Basin Bag may also hold the bag in place, but adding features to a claimed invention does not avoid infringement. The straps of the JMD Basin Bag also are sandwiched between the grate and basin top. The straps, therefore, act in the same way as the flaps in supporting the Basin Bag by frictional impingement. Attaching the ends of the straps to the grate provides added support in the event the weight of the bag during use exceeds the frictional force imposed by the grate on the flaps and straps, but the additional structure and method steps involved in providing such added support does not avoid infringement of claim 10 of the '925 Patent.

Pursuant to Article 4 of the Arbitration Agreement between the parties dated 7 June 1999, I am mailing duplicate originals of this decision to each counsel for the parties. Enclosed with this decision is an invoice for each party representing one half of all fees and disbursements incurred in performance under the Arbitration Agreement.



D. Patrick O'Reilley, Esquire

DPO:pk